

Message Text

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PAGE 01 STATE 302370
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----- 117157 /20

R 132246Z DEC 76
FM SECSTATE WASHDC
TO AMEMBASSY TOKYO

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E.O. 11652:N/A

TAGS:EWWT, JA

SUBJECT:SHIPPING DISCRIMINATION: COMPULSORY PILOTAGE
SCHEME FOR TOKYO BAY

REF: TOKYO 18078

1. DEPARTMENT CONCURS IN EMBASSY'S PRESENTING NOTE AS
PROPOSED REFTEL.

2. DEPARTMENT RECOMMENDS, HOWEVER, THAT TEXT OF LAST
SENTENCE OF FIRST PARAGRAPH BE CHANGED AS FOLLOWS, SO
AS TO REFLECT OUR UNDERSTANDING OF EXACT LANGUAGE OF
PILOTAGE LAW:

"ARTICLE 13, HOWEVER, MAKES AN EXCEPTION FOR MASTERS WHO
HAVE MADE A CERTAIN NUMBER OF PASSAGES THROUGH THE AREA,
PROVIDED THE VESSEL CONCERNED IS A JAPANESE VESSEL OR A
NON-JAPANESE VESSEL WHICH HAS BEEN CHARTERED BY A PERSON
ELIGIBLE TO OWN A JAPANESE VESSEL."

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PAGE 02 STATE 302370

3. IN LAST SENTENCE OF THIRD PARA. OF NOTE, WE RECOMMEND

"CONTRACT" BE CHANGED TO "CHARTERED."

4. FYI. DEPARTMENT HAS ALSO DISCUSSED MATTER BRIEFLY WITH JAPANESE EMBASSY SHIPPING OFFICER. EMBASSY SHIPPING OFFICER ASSERTED THAT TOKYO BAY IS "INLAND WATER" RATHER THAN "TERRITORIAL WATER" (USG ACCEPTS THESE WATERS AS INTERNAL), THAT ARTICLE XIX(6) OF US/JAPAN FCN TREATY PROVIDES EXEMPTION FOR "INLAND WATERS", AND THAT COMPULSORY PILOTAGE SCHEME THEREFORE EXEMPT FROM PROVISIONS OF FCN TREATY. JAPANESE EMBASSY SHIPPING OFFICER ALSO REFERRED TO WASHINGTON STATE PILOTAGE REGULATIONS WHICH INVOKE CONCEPT OF INTERNAL WATERS.

5. DEPARTMENT OFFICER IN RESPONSE NOTED THAT PURPOSE OF ARTICLE XIX(6) IS TO PERMIT RESERVATION OF CERTAIN TYPES OF NAVIGATION FOR DOMESTIC SHIPPING, RATHER THAN ESTABLISHING EXCLUSION FROM TREATY'S OBLIGATIONS FOR ANYTHING DONE IN INTERNAL WATERS. IT CANNOT BE CONSTRUED TO MEAN THAT NATIONAL TREATMENT-MFN OBLIGATIONS REGARDING PORT ACCESS AND RELATED MATTERS UNDER ARTICLE XIX(3) CAN BE DISREGARDED WHERE THE PORTS AND WATERS INVOLVED ARE INTERNAL WATERS. IF THAT INTERPRETATION WERE ACCEPTED, ARTICLE XIX(3) WOULD BE LARGELY MEANINGLESS, SINCE PORTS ARE GENERALLY LOCATED IN INTERNAL WATERS. DEPARTMENT OFFICER ALSO COMMENTED THAT USG REGARDS ELIMINATION OF SHIPPING DISCRIMINATION AS IMPORTANT REGARDLESS OF WHETHER FCN TREATY VIOLATION INVOLVED. END FYI.

6. SHOULD GOJ OFFICIALS BRING UP WASHINGTON STATE PILOTAGE REGULATIONS, EMBASSY SHOULD POINT OUT THAT WHILE CONCEPT OF INTERNAL WATERS WAS BASIS FOR COMPULSORY PILOTAGE REGIME THERE, THE REGULATIONS CONCERNED DID NOT DISCRIMINATE ON BASIS OF NATIONALITY. KISSINGER

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